



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1998

Ms. Belinda R. Perkins  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR98-1734

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117226.

The Teacher Retirement System of Texas ("TRS") received a request for several items of information. You inform us that the requestor clarified his request and that the TRS has released or made available to the requestor portions of the requested information. You assert that three sets of records are excepted from required public disclosure based on sections 552.101, 552.104 and 552.111.<sup>1</sup>

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion

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<sup>1</sup>We assume that the TRS no longer wishes to assert other exceptions you raised in your original correspondence to this office, sections 552.102, 552.103, 552.107, 552.110 and 552.116, since you do not argue their applicability in your brief to this office. Furthermore, although you raise section 552.101 in your brief to this office, you have not explained the applicability of this exception. Thus, we have no basis to conclude that section 552.101 applies to the information. *See* Open Records Decision No. 542 (1990) (governmental body has burden to prove exception applies to requested information.)

portions of the communication. *See id.* We agree that section 552.111 applies to portions of the information. We have marked the documents accordingly.

You raise section 552.104 of the Government Code in regard to the initial offers TRS received for the purchase of Bank One Center, the TRS evaluation charts and for portions of a memorandum. Section 552.104 states that:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592. This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). This office has determined that the TRS may claim section 552.104 to withhold information if release of the information could potentially cause specific harm to the legitimate marketplace interests of TRS. *See* Open Records Decision No. 593 (1991).

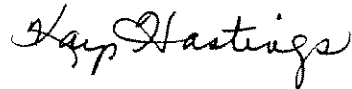
You state that

[a]lthough the sale of the property has been completed, TRS has a continuing competitive interest that would be harmed by the disclosure of bidder identity and details of the bidder's offers, such as price and term information . . . [T]here is a limited pool of potential buyers for real estate property similar in size and value to Bank One Center. The majority of these buyers are money managers or real estate investment trust managers who are collectively representing the interests of many investors. The reputation and financial clout of these managers is [sic] often judged based upon their ability to acquire real properties at attractive prices. If TRS is compelled to disclose the identity of the bidders and the bid amounts, this information could be used to harm or promote the reputation or ability of one bidder over another. This would, in turn, be detrimental to TRS's on-going program for selling properties. . . . Some bidders may be deterred from bidding even if their identity is disclosed because their investment strategy may somehow be revealed publicly if it was known that they participated in the process.

We agree that disclosure of the information regarding the bids and bidders would be likely to cause specific harm to the legitimate marketplace interest of TRS. *See id.* Accordingly, TRS may withhold the bidding information from disclosure based on section 552.104.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/mjc

Ref.: ID# 117226

Enclosures: Marked documents

cc: Mr. R. G. Ratcliffe  
Houston Chronicle  
1005 Congress Ave., Suite 770  
Austin, Texas 78701  
(w/o enclosures)